PORT KENDALL, INC.

IBLA 85-399 Decided August 20, 1986

Appeal from a decision of the Oregon State Office, Bureau of Land Management, denying a protest of the inclusion of a mineral reservation in a patent for parcel OR 36351-J.

Affirmed.

1. Conveyances: Reservations and Exceptions -- Federal Land Policy and Management Act of 1976: Conveyances -- Federal Land Policy and Management Act of 1976: Reservation and Conveyances of Mineral Interests -- Federal Land Policy and Management Act of 1976: Sales -- Mineral Lands: Mineral Reservation -- Patents of Public Lands: Reservations -- Public Sales: Generally

Sec. 209(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1719 (1982), requires that all conveyances of title issued by the Secretary, with certain express exceptions, reserve to the United States all minerals in the land, together with the right to prospect for, mine, and remove the minerals under applicable law and such regulations as the Secretary may prescribe. The fact that there existed no outstanding mineral interests of record as of the date of patent issuance did not preclude the United States from reserving the mineral interests.

APPEARANCES: P. Bogart, Secretary, for Port Kendall, Inc.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Port Kendall, Inc., has appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated February 11, 1985, denying its protest of the inclusion of a mineral reservation in patent 36-85-0028. The instant patent was issued to appellant pursuant to section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1713 (1982), and describes 40 acres in the NE 1/4 SE 1/4 sec. 27, T. 33 S., R. 30 E., Willamette Meridian.

Appellant argues that its patent should have been issued without any reservation in the United States for minerals or for ditches and canals. When a patent issues, BLM is required to convey everything except existing rights of record, appellant maintains. Because there were no existing or recorded rights or claims to minerals, ditches, or canals outstanding as of the date of patent issuance, January 15, 1985, BLM erred, appellant contends, in failing to issue a "clean, unrestricted patent."

The patent provisions that appellant objects to are the following:

> EXCEPTING AND RESERVING TO THE UNITED STATES from the land so granted:
>
> 1. A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945;
>
> 2. All minerals in the lands subject to this conveyance, including, without limitation, substances subject to disposition under the general mining laws, the general mineral leasing laws, the Materials Act and the Geothermal Steam Act.
>
> The United States reserves to itself, its permittees, licensees, lessees and mining claimants, the right to prospect for, mine and remove the minerals owned by the United States under applicable law and such regulations as the Secretary of the Interior may prescribe. This reservation includes all necessary and incidental activities conducted in accordance with the provisions of the mining, geothermal and mineral leasing, and material disposal laws in effect at the time such activities are undertaken, including, without limitation, necessary access and exit rights, all drilling, underground, open pit or surface mining operations, storage and transportation facilities deemed necessary and authorized under law and implementing regulations.
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> * * * * *
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> By purchase of this land, the owner, pursuant to Section 714 of the Surface Mining Control and Reclamation Act, 30 U.S.C. 1304, gives his "surface owner" consent to the United States and its lessees to enter and commence surface mining operations to extract the United States reserved coal.

In support of its objection to these provisions, appellant focuses on language contained in a BLM brochure describing public lands, including the present parcel, to be offered for sale. That language advised prospective bidders that "[t]he tracts would be sold subject to a reservation to the United States for ditches and canals, all mineral rights, and any other valid existing rights of record."

On October 4, 1984, a notice of realty action appeared in the Federal Register announcing the sale of parcel OR 36351-J, inter alia. 49 FR 39241. Parcel OR 36351-J is the land described by patent 36-85-0028. The notice specified that this parcel would be offered for sale on December 5, 1984, and that the parcel had an appraised value of $ 1,900. The notice also provided:

> All minerals in the land will be reserved to the United States in accordance with section 209(a) of the Federal Land Policy and Management Act of 1976. Rights of way for ditches and canals will be reserved to the United States under 43 U.S.C. 945. Patents will be issued subject to all valid existing rights and reservations or [sic] record. Legal access is not guaranteed to the tracts offered for sale. [Emphasis supplied.]

[1] Section 209(a) of FLPMA, 43 U.S.C. § 1719 (1982), requires that all conveyances of title issued by the Secretary of the Interior, except certain land exchanges not here applicable, reserve to the United States "all minerals in the land, together with the right to prospect for, mine, and remove the minerals under applicable law and such regulations as the Secretary may prescribe." Mineral interests may be conveyed, as explained in section 209(b)(1), upon performance of an exploratory mineral program and upon a finding "(1) that there are no known mineral values in the land, or (2) that the reservation of mineral rights in the United States is interfering with or precluding appropriate nonmineral development of the land and that such development is a more beneficial use of the land than mineral development." None of the findings required by section 209(b)(1) is reflected in the record, and no exploratory minerals program has apparently been performed.

The applicable regulation, 43 CFR 2711.5-1, is consistent with the statute. That regulation provides in relevant part: "Patents and other conveyance documents issued under this part shall contain a reservation to the United States of all minerals. Such minerals shall be subject to the right to explore, prospect for, mine, and remove under applicable law and such regulations as the Secretary may prescribe." (Emphasis supplied.)

Had appellant familiarized itself with the relevant statute, cited in the BLM notice of October 4, 1984, and the applicable regulation, it would have been aware that the United States retained not only the mineral estate in the lands conveyed, but also the right to prospect for, mine, and remove any such minerals under applicable law. All persons dealing with the Government are presumed to have knowledge of statutes and duly promulgated regulations, regardless of their actual knowledge of what is contained in such statutes and regulations. Beth Mallory, 47 IBLA 296 (1980); Eric Murray, 47 IBLA 112 (1980).

Moreover, appellant should have been aware that the United States intended to retain its mineral rights because the BLM brochure, cited by

appellant and quoted above, expressly stated the tracts would be sold "subject to a reservation to the United States for * * * all mineral rights." Appellant misunderstands this phrase in contending that since no mineral interests were of record at the time of sale, it should have received a clean, unrestricted patent. To the contrary, this phrase means that the United States was retaining the minerals in parcel OR 36351-J.

The reservation of minerals carries with it, as a necessary appurtenance thereto, the right to use so much of the surface as may be necessary to enforce and enjoy the mineral estate reserved. Harris v. Currie, 142 Tex. 93, 176 S.W. 2d 302, 305 (1943). This is because a reservation of minerals would be wholly worthless if the reserver could not enter upon the land in order to explore for and extract the minerals reserved. Id. Similarly, the conveyance of an interest in coal, oil, and gas carries with it the implied right to enter upon the grantor's land and to use so much of it as necessary for the full enjoyment and benefit of the property granted. Chicago, Wilmington & Franklin Coal Co. v. Minier, 127 F.2d 1006, 1009 (7th Cir.), cert. denied, Howell v. Chicago, Wilmington & Franklin Coal Co., 317 U.S. 669 (1942).

Examination of the mineral title plat for T. 33 S., R. 30 E., Willamette Meridian, reveals a number of parcels that have been patented with a reservation in the United States for ditches and canals. As noted in BLM's October 4, 1984, notice, this reservation is compelled by statute. 43 U.S.C. § 945 (1982). The plat also shows a number of patents whose minerals have been expressly reserved, as in the instant case. Plats such as this are available in BLM offices and are helpful in understanding not only the present status of land but also how BLM has operated in the past.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

John H. Kelly
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge